

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JEFFREY JOHN VALENTA,)	
)	
Plaintiff,)	Civil Action No. 20-912
)	
v.)	Judge Cathy Bissoon
)	Magistrate Judge Maureen P. Kelly
BI INCORPORATED, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

This case has been referred to United States Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72.

On April 1, 2021, the Magistrate Judge issued a Report and Recommendation (“R&R”) (Doc. 40) recommending that the Motion to Dismiss filed by the Probation Defendants (Doc. 22) be granted, but that Plaintiff should be granted leave to amend his Complaint to assert a *Bivens* claim against the Probation Officers only, as appropriate, and that the Motion to Dismiss filed by Defendant BI Incorporated (Doc. 16) be granted. Service of the R&R was made on the parties, and the Probation Defendants and Plaintiff have filed Objections. *See* Docs. 41, 42.

After a *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation and the Objections thereto, the following Order is entered: the Motion to Dismiss filed by the Probation Defendants (Doc. 22) is **GRANTED** without prejudice, as follows. The Magistrate Judge and Probation Defendants correctly acknowledge that the statute of limitations bars any *Bivens* claims based on events that occurred before June 19, 2018, given that Plaintiff filed his Motion for Leave to Proceed *in Forma Pauperis* on June

19, 2020. *See* Probation Defendants’ Brief in Support (Doc. 23) at 7 n.5; R&R at 18 (discussing statute of limitations in the context of BI Incorporated’s Motion to Dismiss). As the Magistrate Judge notes, Plaintiff alleges that he made “numerous complaints” to the Probation Officers regarding his ankle monitor causing “pain burning and permanent damage,” without referencing when these complaints were made, and that he suffered “a red, blistered and weeping silver dollar sized burn” at least as of his sentencing date, June 25, 2018, which required medical attention and continues to cause him pain. R&R at 13. Plaintiff should be allowed an opportunity to amend with regards to these allegations against the Probation Officers, to the extent they occurred after June 19, 2018.

The Motion to Dismiss filed by Defendant BI Incorporated (Doc. 16) is **GRANTED** without prejudice, as follows. As the Magistrate Judge notes, Plaintiff failed to plead facts demonstrating that Plaintiff and all Defendants were citizens of different states in his Complaint. R&R at 15. However, the Court notes that Plaintiff and Defendant BI Incorporated both indicated that there may be complete diversity among the parties in their papers, so the pleading deficiency may be curable by amendment. *See* Plaintiff’s Objections (Doc. 42) at 1-2; Defendant BI Incorporated’s Brief in Support (Doc. 17) at 6. In addition, consistent with the R&R, Plaintiff’s claims are time-barred to the extent his claims arise from his September 15, 2017 fall, but they are not time-barred relative to his June 2018 injuries. R&R at 16-18. Therefore, Plaintiff should be allowed an opportunity to amend with respect to diversity jurisdiction, and with respect to any allegations regarding events that occurred after June 19, 2018.

Plaintiff hereby is granted leave to file an amended complaint consistent with the above on or before **August 11, 2021**. Should Plaintiff choose to amend, he must be prepared to make last, best efforts to state viable claims, because additional leave will not be granted. Finally, if

amendment is not timely-filed, Plaintiff will be deemed to stand on his current pleadings, and final judgment will be entered (without prejudice to Plaintiff pursuing his claims in state court, as appropriate).

Accordingly, Plaintiff's claims against Defendants are dismissed without prejudice, and the R&R is adopted as the Opinion of the District Court.

IT IS SO ORDERED.

July 21, 2021

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via ECF email notification):

All Counsel of Record

cc (via U.S. Mail):

Jeffrey John Valenta
1941 Dearborn Drive
White Oak, PA 15131